

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CLARK RANSOM,

Appellant,

v.

BOARD OF INDUSTRIAL INSURANCE
APPEALS,

Respondent.

) Case No. DISM-98-0044

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on Thursday, July 15, 1999. NATHAN S. FORD Jr., Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Clark Ransom did not appear and no representative appeared on his behalf. Respondent Board of Industrial Insurance Appeals was represented by Michael P. Sellars, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, inefficiency, insubordination and gross misconduct. Appellant refused to follow his supervisor's directives, failed to comply with the directives of a formal corrective action plan, failed

1 to issue the minimum number of required orders, and failed to issue orders within the prescribed
2 timeframes.

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4 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084
5 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Anane v.
6 Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston
7 Co. Super. Ct. Jan. 10, 1997); Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

8 9 II. FINDINGS OF FACT

10 2.1 Appellant Clark Ransom was an Industrial Appeals Judge 2 and permanent employee for
11 Respondent Board of Industrial Insurance Appeals (BIIA). Appellant and Respondent are subject
12 to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.
13 Appellant filed a timely appeal with the Personnel Appeals Board on September 16, 1998.

14
15 2.2 By letter dated August 6, 1998, Janet R. Whitney, Chief Industrial Appeals Judge, informed
16 Appellant of his dismissal effective August 21, 1998. The termination letter charged Appellant with
17 neglect of duty, inefficiency, insubordination, and gross misconduct for not complying with his
18 supervisor's directives to comply with the provisions of a formal corrective action plan, for failing
19 to issue the minimum number of required orders, and for failing to issue orders within the
20 prescribed timeframes for the period between July 1997 through May 1998.

21
22 2.3 Appellant began his employment with the BIIA in 1988. As an Industrial Appeals Judge
23 (IAJ) 2, Appellant's responsibilities included scheduling and conducting hearings on appeals of
24 decisions of the Department of Labor and Industries regarding benefits for work related injuries or
25 determinations of medical benefits (workers' compensation appeals). Appellant's official
26

1 workstation was in Olympia, Washington, and he was geographically assigned to conduct hearings
2 in Tacoma, Washington.

3
4 2.4 Respondent requires that after completion of the hearing on appeals, IAJ's issue Proposed
5 Decisions and Orders within 60 days from the date that the complete record in the appeal, including
6 a transcript of the proceedings, is referred to the IAJ. Not included in the 60-day timeframe are
7 delays caused by holidays, annual leave, sick leave, other authorized leave, staff meetings, and
8 workload. Respondent also requires IAJ's to issue an average of four Proposed Decisions and
9 Orders (PD&O's) per month. The agency's mission is to ensure that parties appearing before the
10 BIIA, which consists primarily of injured workers, receive timely resolution on issues that
11 determine whether or not benefits will be awarded. The 60-day timeframe was established to
12 ensure that no backlog of these cases occurred and to ensure that timely decisions are issued. In
13 addition, Respondent expects its IAJ's to issue an average of four orders per month. Appellant was
14 aware of these performance expectations.

15
16 2.5 Appellant's personnel file includes six counseling memos issued by Stephen E. Allison,
17 Appellant's supervisor, addressing concerns with Appellant's work performance, specifically
18 concerns with workload backlogs, not issuing PD&O's within the 60-day timeframe and not issuing
19 an average of four PD&O's per month.

20
21 2.6 By memo dated May 27, 1997, Mr. Allison established a formal corrective action plan for
22 Appellant based on his repeated unsuccessful attempts to correct Appellant's poor job performance.
23 The corrective action plan directed the Appellant to comply with the following:

- 24
- 25 • You will work a minimum of 40 hours per week at this agency and prioritize
26 the issuance of your proposed decisions and orders, both those that are overdue
and those that continue to become due every month.

- You will work in your office in Olympia on any day that you do not have scheduled proceedings elsewhere. If you have proceedings in Tacoma that complete by 1:30, you will return to your office in Olympia to complete the work-day.
- By 12 noon each Monday, you will submit a report to me outlining your work activities for the prior week. While this need not be in the form of a time-sheet, the report should set forth the work accomplished and the approximate amount of total time spent on each work activity. The report should detail the proposed orders you drafted, the orders that were actually issued, and the time spent in drafting and issuing your orders.
- You will meet with me as needed to review your job performance report and to assess your progress on getting caught up with your overdue PD&Os.
- You will meet with me as needed to review your job performance report and to assess your progress on getting caught-up with your overdue PD&Os.
- Should any impediments develop to the drafting and issuance of your PD&Os, such as the absence of your secretary, you are to inform me immediately so that I can take steps to ensure that your work is not delayed.
- You will provide me with an overage case report without fail by the end of each month based on the computer reports for the previous month which are distributed on approximately the 20th of each month. The overage case report is to contain an explanation for the delays on any case beyond the six-month completion guideline that has not yet reached ready status. It should also contain the number of credit days your are claiming against the 60-day performance expectation for the issuance of your PD&Os. Finally, it should contain a list of your pending PD&Os and the date by which you expect them to be issued.

2.7 Respondent imposed a seven-day suspension against Appellant by letter dated September 22, 1997, for neglect of duty, inefficiency, incompetence and gross misconduct for Appellant's failure to meet the performance expectations of his position by not complying with the directives of the May 27, 1997 formal corrective action plan, for failing to issue the minimum number of required orders which resulted in a severe backlog of his workload, and for failing to issue orders within the prescribed timeframes for the period between July 1996 through July 1997 (see Ransom v. Board of Industrial Insurance Appeals, PAB No. SUSP-97-0039).

1
2 2.8 Appellant was aware that the May 27, 1997 corrective action plan remained in effect
3 following the seven-day suspension.
4

5 2.9 In June 1997, Mr. Allison completed Appellant's performance evaluation which rated
6 Appellant as "Fails to Meet Minimum Requirements" in the Accomplishment of Job Requirements
7 category. Mr. Allison noted that Appellant's "production and lag time have been so unsatisfactory
8 that his overall performance has failed to meet the minimum requirements for a judge of his tenure."
9 Appellant also failed to meet the minimum requirements in the Job Reliability category.
10

11 2.10 By memo dated March 20, 1998, Mr. Allison addressed Appellant's failure to comply with
12 the May 27, 1997 corrective action plan. Mr. Allison noted that Appellant had failed to consistently
13 provide him with an overage case report by the end of each month, had failed to submit, by noon on
14 Mondays, a report outlining his work activities for the prior week, and was not issuing an
15 acceptable number of orders per month. Mr. Allison instructed Appellant to begin submitting the
16 weekly activity reports and the monthly overage reports on their due dates. Mr. Allison warned
17 Appellant that if he did not immediately begin complying with the terms of the corrective action
18 plan, action up to and including termination would be taken. (Exh. R-23).
19

20 2.11 On May 1, 1998, Mr. Allison sent an e-mail to Appellant directing him to submit the
21 overdue reports as well as the overage case report for the month of March, which had been due by 5
22 p.m. on April 30. Mr. Allison directed Appellant to submit the report by May 4, 1998, and warned
23 Appellant that no further delay in the submission of reports would be tolerated. Appellant did not
24 submit the reports.
25
26

1 2.12 By memo dated May 12, 1998, to Appellant, Mr. Allison addressed Appellant's failure to
2 comply with the instructions of the March 20, 1998 memo and the May 1, 1998 e-mail. Appellant
3 had failed to submit the monthly overage case reports or the weekly activity logs as directed. Mr.
4 Allison arranged to meet with Appellant on May 19, 1998 to discuss Appellant's failure to comply
5 with the corrective action plan of May 27, 1997 and the subsequent directives issued by Mr.
6 Allison. Mr. Allison wanted to obtain information from Appellant that would assist him in
7 determining whether to recommend disciplinary action.

8
9 2.13 Mr. Allison met with Appellant on May 19 and by memo dated May 27, 1998, to Ms.
10 Whitney, Mr. Allison, having received no compelling reasons from Appellant for his failure to
11 improve his performance and follow directives, recommended that formal disciplinary action be
12 taken.

13
14 2.14 By letter dated June 11, 1998, Ms. Whitney informed Appellant that she was considering
15 dismissing him from his position as an Industrial Appeals Judge based on his failure to comply with
16 the corrective action plan dated May 27, 1997; his failure to comply with numerous oral and written
17 requests to submit his overdue monthly overage case reports and weekly activity log; and his failure
18 to issue the expected average of four or more PD&O's per month and to issue them within the 60-
19 day timeframe. A review of Appellant's performance showed that between July 1997 through May
20 1998, Appellant had issued an average of only two PD&Os per month.

21
22 2.15 On July 21, 1998, Ms. Whitney met with Appellant and his representative to discuss the
23 allegations identified in the June 22, 1998 letter. Following the meeting, Ms. Whitney concluded
24 that Appellant provided no mitigating information regarding his work performance deficiencies nor
25 any evidence that any of the allegations were erroneous.

1 2.16 As Appellant's appointing authority, Ms. Whitney determined that disciplinary action was
2 warranted. In determining the level of discipline, Ms. Whitney considered that Appellant was
3 aware of his duty to meet the agency's timeframe and production standards and that he was aware
4 of his responsibility to comply with the corrective action plan. Ms. Whitney also concluded that
5 Appellant's refusal to comply with Mr. Allison's oral and written directives to submit the requisite
6 overage and weekly reports was insubordination. Ms. Whitney concluded that Appellant had ample
7 time during which he had no proceedings and should have been writing orders, yet he failed to issue
8 an average number of orders. Ms. Whitney noted that Appellant's performance would briefly
9 improve following meetings with Mr. Allison, but never on a consistent and acceptable level.

10
11 2.17 Ms. Whitney concluded that Appellant's failure to improve his performance deficiencies
12 negatively affected the agency's ability to make timely decision on workers' compensation appeals.
13 Based on the negative impact to the agency and its constituents, a previous suspension addressing
14 the same behavior, and his refusal and unwillingness to respond to his supervisor's directives and
15 offers of help, Ms. Whitney concluded that termination was warranted.

16 17 **III. ARGUMENTS OF THE PARTIES**

18 3.1 Respondent argues that despite Appellant's supervisor's attempts to get Appellant to comply
19 with the requirements of the May 27, 1997 corrective action, Appellant failed to consistently meet
20 performance expectations and submit his reports. Respondent argues that after Appellant's
21 supervisor counseled Appellant, Appellant's performance improved, however, he would inevitably
22 fall back into old poor performance patterns. Respondent argues that Appellant had sufficient time
23 to issue orders within the allowable timeframe, but he failed to do so. Respondent argues that
24 Appellant was extended every opportunity to comply with the performance expectations of his
25 position and the directives of his supervisor and that his behavior negatively impacted the agency's
26 clients.

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2 3.2 Appellant did not provide a defense to the charges nor did he dispute the appropriateness of
3 the disciplinary sanction before the Board.
4

5 IV. CONCLUSIONS OF LAW

6 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
7 herein.
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9 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
10 the charges upon which the action was initiated by proving by a preponderance of the credible
11 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
12 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
13 Corrections, PAB No. D82-084 (1983).
14

15 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
16 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
17 of Social & Health Services, PAB No. D86-119 (1987).
18

19 4.4 Appellant was aware of the performance expectations of his position and he was clearly
20 aware of his duty to follow the directives set forth in the corrective action plan. Respondent has
21 proven that Appellant failure to issue an average number of orders within the prescribed timeframe
22 and his failure to comply with the directives of the corrective action plan constitute a neglect his
23 duty.
24

25 4.5 Inefficiency is the utilization of time and resources in an unproductive manner, the
26 ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of

1 effective operations as measured by a comparison of production with use of resources, using some
2 objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal*
3 *dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

4
5 4.6 Respondent has proven that Appellant had sufficient time in which to complete and issue
6 orders and that Appellant was inefficient in the use of his available work time.

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8 4.7 Insubordination is the refusal to comply with a lawful order or directive given by a superior
9 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
10 Dep't of Social & Health Services, PAB No. D94-025 (1995).

11
12 4.8 Appellant was given numerous directives to comply with the corrective action plan to
13 submit overage and weekly reports. His refusal to comply with his supervisor's directives
14 constitute insubordination.

15
16 4.9 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
17 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

18
19 4.10 Appellant's failure to issue orders within the agency's prescribed timelines and his failure to
20 issue an average of four orders on a monthly basis adversely affected the agency's ability to issue
21 timely determinations regarding benefits for employees suffering from work-related injuries and
22 rises to the level of gross misconduct.

23
24 4.11 Respondent provided extensive evidence of its repeated attempts to assist Appellant to
25 improve his performance. Appellant was in a highly professional position and as such must be held
26 to a higher standard of conduct and accountability. Appellant's refusal to meet even the minimum

1 expectations of his position shows a serious lack of regard for his job and for the many individuals
2 impacted by his inaction. Respondent has proven that termination is the appropriate sanction and
3 the appeal should be denied.

4
5 **V. ORDER**

6 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Clark Ransom is denied.

7
8 DATED this _____ day of _____, 1999.

9
10 WASHINGTON STATE PERSONNEL APPEALS BOARD

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12 _____
13 Walter T. Hubbard, Chair

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15 _____
16 Gerald L. Morgen, Vice Chair
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